IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.21609 of 2007
BIBI NOORI KHATOON , WIFE OF FARID ANSARI, RESIDENT OF VILLAGE BASTOL, P.S. PRANPUR, DISTRICT-KATIHAR…….PETITIONER.
Versus

1. **THE STATE OF BIHAR.**
2. **ABDUL HAQUE ANSARI, SON OF JASIMUDDIN.**
3. **ISRAFUL ANSARI, SON OF JASIMUDDIN.**
4. **ABDUL MAJID ANSARI, SON OF JASIMUDDIN.**
5. **ISLAAM ANSARI, SON OF JASIMUDDIN.**
6. **RAJJAK ANSARI, SON OF LATE TURAI ANSARI.**
7. **RASHEED ANSARI, SON OF LATE TURAI ANSARI.**
8. **MAIMUN KHATOON, WIFE OF ABDUL HAQUE.**
9. **RAUSHAN KHATOON, DAUGHTER OF ABDUL HAQUE.**
10. **KOHENOOR KHATOON, DAUGHTER OF ABDUL HAQUE.**

ALL RESIDENT OF VILLAGE BASTOL, P.S. PRANPUR, DISTRICT-KATIHAR……OPPOSITE PARTIES.

For the Petitioner : Mr. Ravi Bhushan Prasad, Advocate.
For the State : Mr. Jharkhandi Upadhayay, A.P.P.
For O.P. Nos.2 to 10 : None.

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O R D E R

The complainant of Complaint Case No.CA 2523 of 2005, who allegedly fell victim of a horrendous act of sexual outrage at the hands of O.P. No.2 herein, beseeching justice in order to bring the megalomaniac bete noire to book has filed this application under Section 482 Cr.P.C. impugning the order dated 29.8.2006 passed therein by Sri Ghyasuddin, Judicial Magistrate, First Class, Katihar, whereby while taking cognizance of offences under Sections 323, 354, 379 I.P.C. he has left out the principal offence of Section 376 I.P.C. and the subsequent order dated 14.11.2006 passed by Sri Bipin Bihari Singh, the erstwhile Sessions Judge, Katihar, in Cr. Revision No.164 of 2006 preferred against the order dated 29.8.2006, whereby while

dismissing the revision he observed that in view of Section 202 Cr.P.C. the Magistrate is to hold whether there is sufficient ground to proceed against the accused or not and no where it is mentioned that the Judicial Magistrate is to mention section of the offence.

The complaint case was filed against the accused persons alleging commission of offences under Sections 376, 452, 380/34 I.P.C. at their hands. Briefly stated the complainant's case is that at about 6 P.M. on 22.11.2005 she had gone to the adjacent Banswari to answer the call of nature where she was poached upon by petitioner no.2 herein who catching hold of the complainant covered her mouth, threw her onto the ground and forcibly satiated his carnal desire. The complainant started weeping which attracted the attention of nearby villagers who arrived and caught hold of the rapist. However, on hulla being raised by the culprit, the remaining accused persons armed with weapons arrived and set free the culprit. It is further alleged that the accused persons later on armed with lathi, farsa and garasa arrived at the house of the complainant, assaulted her and her family members and fled away when the villagers intervened. It is said that while departing, accused no.3 took away an attachi case of the complainant containing clothes, ornaments and cash.

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It appears that at the inquiry under Section 202 Cr.P.C., the statement of the complainant on S.A. was recorded and 4 other witnesses on her behalf were examined and on consideration of the materials available on record the learned Magistrate found sufficient grounds to proceed against the accused for offences under Sections

323, 354, 379 I.P.C. only and directed for issuance of summons against them.

The sole grievance of the petitioner is that the learned Magistrate, notwithstanding a clear case under Section 376 I.P.C. having been made out against O.P. No.2 herein from the materials available on record had fallen in error in not taking cognizance thereunder and the revisional court had followed suit by misinterpreting the provisions of Section 202 Cr.P.C.

Chapter XV deals with the procedure to be followed by a Magistrate upon taking cognizance of an offence upon a complaint i..e. when it takes cognizance under Section 190 (1)(a) Cr.P.C. and not when he takes cognizance upon a police report for other information mentioned in Sections 190(1)(b) and ((c). In Baidlal Vs. Dattaraya(AIR 1960 SC 1113) and Pramatha Nath Vs. Saroj Ranjan(AIR 1962 SC 876) the scope of inquiry under Section 202 Cr.P.C. is described to be limited to find out whether process should issue or not and Section 203 Cr.P.C. lays down what materials have to be reconsidered for the purpose. As held by the Supreme Court in Nagwwa Vs. Veeranna (AIR 1976 SC 1947) and Mahendra Vs.Kulwant (AIR 1982 SC 1894), the scope of the inquiry under Section 202 Cr.P.C. has been limited only to ascertainment of the truth or falsehood of the allegations made in the complaint on the basis of (i) on the materials placed by the complainant before the court; (ii) for limited purpose of finding out whether a prima facie case for issue of process has been made out ; (iii) for deciding the question purely from

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the point of view of the complainant without at all adverting to any other matter. The inquiry at this stage does not par- take the character of a full dressed trial which could only take place after process is issued under Section 204 Cr.P.C. The question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry as contemplated by Section 202 Cr.P.C. In other words, if a prima facie case has been made out the Magistrate ought to issue processes and it cannot be refused merely because he thinks it is unlikely to result in a conviction.

In the instant case, having had the advantage of perusing the statement of the complainant on S.A. and the 4 witnesses examined on her behalf at the inquiry under Section 202 Cr.P.C. it is abundantly clear that the complainant had forcibly been made to fall a victim of the carnal desire of O.P. No.2 herein. In the face of such glowing accusations it was abundantly clear that a case of commission of offence under Section 376 I.P.C. had prima facie been made out against O.P. No.2 and I am unable to understand as to what weighed in the mind of the learned Magistrate so as to come to a finding that no case under Section 376 I.P.C. had been made out.

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One may look this situation from another angle. Section 203 Cr.P.C. provides that where the Magistrate dismisses a complaint case because in his judgment there is no sufficient ground for proceeding with the trial he shall record his reasons for doing so. Here the Magistrate has perused the materials available on record and proceed to take cognizance and issued directions for issuance of

summons against accused persons only under Section 323, 354 and 379 I.P.C. but he has been remiss in not stating the reasons which led him to believe that no offence under Section 376 IPC had been made out. Prejudice appears to be writ large on the face of the order. The complainant is entitled to know why his/her complaint in respect of an offence under Section 376 I.P.C. has not found favour with the Magistrate.

For the reasons, stated in the aforesaid paragraphs, I am of the opinion that the orders passed by the learned Magistrate as also the Revisional Court cannot be sustained as they are unwarranted.

Accordingly, while quashing the two impugned orders, I allow this application.

(Abhijit Sinha,J)

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Patna High Court, Patna.
Dated: The 24th of October, 2008.
Pradeep Srivastava/A.F.R.